

INDEX

	Page
Opinion below.....	1
Jurisdiction.....	1
Question presented.....	2
Statutes involved.....	2
Statement.....	3
Argument.....	8
Conclusion.....	11

CITATIONS

Cases:

<i>Hickman v. Taylor</i> , decided January 13, 1947.....	11
<i>Goldsmith v. Bd. of Tax Appeals</i> , 270 U. S. 117.....	9
<i>Norwegian Nitrogen Co. v. United States</i> , 288 U. S. 294.....	10
<i>Prigg v. Pennsylvania</i> , 16 Pet. 539.....	9
<i>Southern Pac. R. Co. v. United States</i> , 38 Fed. 55.....	9

Statutes:

Act of July 7, 1884, c. 334, 23 Stat. 236 (5 U. S. C. 261)....	2, 9
Revised Statutes, Sec. 161 (5 U. S. C. 22).....	3, 9

Miscellaneous:

Annual Reports of the Secretary of the Treasury:

June 30, 1921 (pp. 130, 131).....	9
June 30, 1922 (p. 95).....	9
June 30, 1927 (p. 194).....	9
June 30, 1945 (p. 236).....	9

Federal Rules of Civil Procedure, Rule 41.....	10
--	----

Treasury Department Circular No. 230, 1942-1 Cum. Bull. 367, Sec. 2.....	8, 9, 10
---	----------



In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1263

PAYSOFF TINKOFF, PETITIONER

v.

NIGEL D. CAMPBELL, COLLECTOR OF INTERNAL
REVENUE, AND ORVILLE BACON, DEPUTY
COLLECTOR

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH
CIRCUIT*

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINION BELOW

The District Court filed no opinion. Its findings of fact and conclusions of law are unreported.¹ The opinion of the Circuit Court of Appeals is reported at 158 F. 2d 855.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 23, 1946. A petition for

¹ The petitioner did not file a printed transcript of record. The certified typewritten transcript of record does not contain continuous pagination. Accordingly, page references to the record are not possible.

a rehearing was denied on January 18, 1947. The petition for a writ of certiorari was filed on April 18, 1947. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the court below correctly held that the District Court properly refused to enjoin the Collector of Internal Revenue from enforcing instructions issued by him to the Deputy Collectors and other employees in his office to refrain from dealing with the petitioner as a representative of any taxpayer, the petitioner having been disbarred from practice before the Treasury Department.

STATUTES INVOLVED

Act of July 7, 1884, c. 334, 23 Stat. 236, 258-259:

* * * That the Secretary of the Treasury may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. And

such Secretary may after due notice and opportunity for hearing suspend, and disbar from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement.

* * * * *

(5 U. S. C. 261.)

Revised Statutes:

Sec. 161. The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it. (5 U. S. C. 22.)

STATEMENT

The petitioner, Paysoff Tinkoff, filed in the District Court a bill for injunction against the Collector of Internal Revenue for the First Collection District of Illinois and the Deputy Collector of Internal Revenue. The bill, as amended, was dismissed by the District Court.

The original bill for injunction filed December 8, 1944, contained one count and a second count was added by amendment on September 26, 1945.

The facts alleged in the original bill may be summarized as follows:

That the petitioner is engaged in business as an expert tax accountant with his wife and son; that the petitioner as a layman, and not as an enrolled agent or attorney of the Treasury Department, prepares income tax returns and other federal returns required by law, which are filed with the Collector of Internal Revenue for the First District of Illinois; that the respondents maliciously and willfully and unlawfully conspired to injure, impair, and destroy the petitioner's business by telling various clients of the petitioner that he was not a fit, reliable and trustworthy person to do business with, and that they should have their returns prepared by other accountants or persons enrolled to practice before their department; that those clients have, as a result, refused to continue to have petitioner do any work for them. It was also alleged that Nigel Campbell had directed all Deputy Collectors in the First District of Illinois, numbering in excess of several hundred Deputy Collectors, to advise and inform any clients whose returns were prepared by the petitioner, that he is not a fit and qualified person to prepare an income tax return; that the petitioner's returns would not be considered favorably by the office and that those clients should have their returns prepared by accountants or enrolled practitioners other than the petitioner; and that, as a result, those clients have, without just cause, wilfully

breached their pending contracts with the petitioner.

The bill prayed that the respondents be enjoined from interfering with the right of the petitioner to conduct his business as an accountant and as an ordinary layman, and from advising any of the petitioner's clients that he is not a proper and fit person to prepare income tax returns and from threatening or coercing any of his clients or customers or persons seeking the services of petitioner from continuing his services as an accountant and as a layman.

The additional facts alleged in the second count contained in the amendment to the bill may be summarized as follows:

That approximately two hundred income tax returns of taxpayers, which had been prepared by the petitioner for the years 1943 and 1944, were under investigation by the office of the Collector of Internal Revenue; that those taxpayers have requested and desire the petitioner to discuss the computations on the returns with the office of the Collector of Internal Revenue; that the petitioner has presented himself to the Collector to discuss the tax problems of the various taxpayers, and that the Collector has refused to allow him to discuss these problems for the taxpayers on the ground that all representatives of any taxpayer must be licensed to practice before and be enrolled in the Treasury Department or its various de-

partments and that one not having a license cannot represent a taxpayer.

The amendment to the bill prayed that Collector Campbell be enjoined from enforcing the illegal regulations in preventing the petitioner from discussing with the office of the Collector the various problems and computations relating to the taxpayers' tax returns prepared by the petitioner.

The answers of the respondents to the bill for injunction and the amendment thereto denied all of the material allegations made by the petitioner, but admitted that the Collector of Internal Revenue had refused, in accordance with the law and regulations of the Department, to permit persons not enrolled to practice before the Department to represent a taxpayer. The answer further alleged that on November 27, 1934, the Collector of Internal Revenue for the First Collection District of Illinois, received a letter from the Commissioner of Internal Revenue advising that Paysoff Tinkoff had been disbarred from practice as an attorney before the Treasury Department from and after November 23, 1934, and that pursuant to this communication, the Collector of Internal Revenue, on December 5, 1934, caused to be issued to all officers and employees under his direction and control a memorandum stating that Paysoff Tinkoff had been disbarred from practice as an attorney before the Treasury De-

partment. Affidavits of the respondents and of five other persons were attached to the answers.

The findings of fact and conclusions of law of the District Court may be summarized as follows:

At the time the original bill for injunction was filed in this cause, Nigel D. Campbell was assistant to the Collector of Internal Revenue for the First District of Illinois and is now Collector of Internal Revenue for that district; Orville Bacon was at the time of the filing of this suit, and is now, a Deputy Collector of Internal Revenue for that District, and Carter H. Harrison, who was named as a defendant in the original bill for injunction, resigned as Collector of Internal Revenue for the First Collection District of Illinois on December 31, 1944.

The Collector of Internal Revenue for the First Collection District of Illinois, the Deputy Collectors, and other employees under the Collector have denied the petitioner the right to practice before any of the employees of the office of the Collector of Internal Revenue for the First Collection District of Illinois. The petitioner is now, and has been since November 27, 1934, disbarred from practice before the Treasury Department of the United States Government. The petitioner has not proved that the acts of the respondents, or any of them, were illegal or unlawful.

The District Court concluded as a matter of law that the petitioner had failed to submit sufficient evidence to substantiate the allegations contained

in his original bill for injunction and the amendment to the bill for injunction, and that under the Act of July 7, 1884, *supra*, and the regulations of the Treasury Department, promulgated in accordance therewith, the Collector's office is authorized to refuse to permit persons not enrolled to practice before the Treasury Department to practice therein. The court accordingly entered an order decreeing that the issues in this cause were found in favor of the respondents and against the petitioner and that the cause be dismissed. The Circuit Court of Appeals affirmed the judgment of the District Court.

ARGUMENT

1. The decision below is correct. Treasury Department Circular No. 230 (as revised to October 23, 1941), 1942-1 Cum. Bull. 367, provides for the enrollment of attorneys and agents entitled to practice before the Treasury Department. Section 2 (b) of Circular No. 230 defines practice before the Treasury Department "to comprehend all matters connected with the presentation of a client's interests to the Treasury Department" and Section 2 (a) provides that no person shall be eligible to "practice" before the Treasury Department unless he is properly enrolled. It is not denied that Circular No. 230 is designed to prohibit any person who is not enrolled or who, like the petitioner, has been disbarred from practice, from representing any client before the Treasury

Department. Nor is it denied that Circular No. 230 is sufficiently broad so as to apply to the representation of persons whose tax liability is being questioned administratively but who are not seeking a refund of taxes already paid.

There is no merit in the contention (Pet. 2-3, 5-11) that the Secretary of the Treasury is without authority to promulgate such a regulation. Circular No. 230 was issued under the authority of several statutes, including Section 161 of the Revised Statutes, *supra*, which, of itself, is sufficient to sustain the regulation of practitioners before the Treasury Department. Cf. *Goldsmith v. Bd. of Tax Appeals*, 270 U. S. 117. For reports on the need for this regulation and on the manner of its operation, see the Annual Reports of the Secretary of the Treasury for the fiscal years ended June 30, 1921 (pp. 130, 131), June 30, 1922 (p. 95), June 30, 1927 (p. 194), and June 30, 1945 (p. 236).

The Act of July 7, 1884, *supra*, which was also authority for the issuance of Circular No. 230, is not, moreover, limited to the regulation of representatives of persons who assert money claims against the United States. No case is cited which construes the word "claimant" in this statute in so limited a manner. The word "claim" is sometimes used in a broad sense and is not always limited to claims for the return of money. *Prigg v. Pennsylvania*, 16 Pet. 539, 615; *Southern Pac. R. Co. v. United States*, 38 Fed. 55, 56 (N. D.

Cal.). To the extent that Circular No. 230 uses the word "claimant" in a broad sense, it represents a continuous administrative interpretation of the statute which has existed since 1921 when Circular No. 230 was first promulgated and, as such, is entitled to great weight in determining the meaning of the statute. *Norwegian Nitrogen Co. v. United States*, 288 U. S. 294, 315.

Accordingly, the court below correctly decided that the Collector of Internal Revenue should not be enjoined from enforcing the provisions of Circular No. 230 and from preventing the representation of taxpayers in his office by a person who was disbarred from enrollment.

2. The other matters raised (Pet. 3), but not discussed, are also lacking in merit. Since the answer stated a valid defense, the motion to strike the answer was properly denied. The District Court was also correct in allowing the respondents' motion to dismiss the complaint after the close of the petitioner's case, the matter having been tried without a jury. Since the petitioner did not prove the allegations that the respondents had conspired to destroy his business and did not show that he was entitled to the relief sought, the action of the District Court was proper under Rule 41 (b) of the Federal Rules of Civil Procedure. Nor was there any abuse of discretion by the District Court in denying the request for a pre-trial examination of certain witnesses since there was no showing that this would

have assisted the petitioner in ascertaining unknown facts, or would have clarified the issues, or would have simplified or shortened the trial. See *Hickman v. Taylor*, No. 47, October Term, 1946, decided January 13, 1947. Finally, the assertion that the Circuit Court of Appeals did not consider the questions presented to it (Pet. 2, 11-12) is altogether unwarranted. The court below, having found "no merit whatever in any of the contentions raised", was not required to discuss those contentions in an extensive opinion.

CONCLUSION

The decision below is correct. No conflict in decisions is presented. Accordingly, further review of the case would not be warranted and the petition for a writ of certiorari should be denied.

Respectfully,

GEORGE T. WASHINGTON,
Acting Solicitor General.

SEWALL KEY,
Acting Assistant Attorney General.

A. F. PRESCOTT, *c*

HILBERT P. ZARKY,
Special Assistants to the Attorney General.

MAY 1947.